

**N-109****APPLICATION FOR TENTATIVE REFUND FROM CARRYBACK  
OF NET OPERATING LOSS**

(REV. 1997)

**Do Not Attach to Your Income Tax Return — File Separately to Expedite Processing  
For use by individuals, estates, or trusts.**

Please Type or Print	Name(s)	Federal Employer I.D. No. if any
	Number and Street	Your social security number
	City or town, State and ZIP code	Spouse's social security number

1 Return for year of net operating loss.	(a) Tax year ended	(b) Date filed	(c) District Office where filed
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2 Amount of net operating loss (from page 2, line 10)	\$ _____
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3 (a) Preceding tax year(s) affected by carryback	(b) Did spouse file a separate return?	(c) District Office where return(s) filed
3rd	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2nd	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1st	<input type="checkbox"/> Yes <input type="checkbox"/> No	

4 If you changed your accounting period, give date permission to change was granted	
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5 Have you filed a petition in the Tax Appeal Court for the year or years to which the loss is to be applied? .....	<input type="checkbox"/> Yes <input type="checkbox"/> No
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Computation Decrease in Tax	3rd preceding tax year ended		2nd preceding tax year ended		1st preceding tax year ended	
	(a) Before carryback	(b) After carryback	(c) Before carryback	(d) After carryback	(e) Before carryback	(f) After carryback
6 Adjusted gross income as last determined .....						
7 Net operating loss deduction resulting from carryback (attach computation) .....						
8 Line 6 minus line 7 .....						
9 Deductions (see Instructions) .....						
10 Line 8 minus line 9 .....						
11 Exemptions .....						
12 Taxable income (line 10 minus line 11) .....						
13 Income tax .....						
14 Non-refundable tax credits (list): .....						
_____						
_____						
_____						
_____						
Total non-refundable credits .....						
15 Line 13 minus line 14, but not less than zero .....						
16 Total refundable tax credits .....						
17 Total tax liability (line 15 minus line 16) .....						
18 Enter amount from line 17. .... {	column (b)		column (d)		column (f)	
19 Decrease in tax, line 17 minus line 18. ....						

**ATTACH COPIES OF FEDERAL FORM 1040 (See Instructions.)****Declaration**

I declare, under the penalties set forth in section 231-36, HRS, that I have examined this application, including any accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete.

(Your signature and date)

(If application is filed jointly by husband and wife both must sign)

(Spouse's signature and date)

**Schedule A (Form N-109)—Computation of Net Operating Loss**

<b>1</b>	Adjusted gross income from Form N-11, N-12, or N-15 (Form N-15 filers, see Instructions) (estates and trusts, skip lines 1 and 2) ..				<b>1</b>		
<b>2</b>	Deductions (applies to individuals only):						
<b>a</b>	Enter the amount of your total itemized deductions OR standard deduction from Form N-11, N-12, or N-15 (Form N-15 filers, see Instructions) .....	<b>2a</b>					
<b>b</b>	Exemptions (see Instructions) .....	<b>2b</b>					
<b>c</b>	Add lines 2a and 2b (estates and trusts, enter zero) .....				<b>2c</b>	(	)
<b>3</b>	Combine lines 1 and 2c (estates and trusts, enter your taxable income) .....				<b>3</b>		
<b>Note:</b> If line 3 is zero or more, do not complete rest of schedule. You do not have a net operating loss.							
<b>Adjustments:</b>							
<b>4</b>	Exemptions from line 2b above (estates and trusts, enter exemption from your tax return) .....			<b>4</b>			
<b>5 a</b>	Enter the excess of your nonbusiness capital losses over your nonbusiness capital gains .....	<b>5a</b>					
<b>b</b>	Enter the excess of your business capital losses over your business capital gains plus nonbusiness capital gains not used in figuring line 8c .....	<b>5b</b>					
<b>c</b>	Enter total of lines 5a and 5b but not more than your capital loss limitation .....			<b>5c</b>			
<b>6 a</b>	Enter the amount of interest income from Hawaii or any of the Hawaii counties' obligations .....	<b>6a</b>					
<b>b</b>	Enter the amount of interest expense related to income not taxable by Hawaii .....	<b>6b</b>					
<b>c</b>	Line 6a minus line 6b .....			<b>6c</b>			
<b>7</b>	Net operating loss deduction from other years .....			<b>7</b>			
<b>8 a</b>	Nonbusiness deductions .....	<b>8a</b>					
<b>b</b>	Nonbusiness income plus the excess of your nonbusiness capital gains over your nonbusiness capital losses .....	<b>8b</b>					
<b>c</b>	Line 8a minus line 8b. If 8b is more than 8a, enter zero .....			<b>8c</b>			
<b>9</b>	Add lines 4, 5c, 6c, 7 and 8c .....				<b>9</b>		
<b>10</b>	Combine lines 3 and 9. This is your net operating loss. Enter here and on page 1, line 2 .....				<b>10</b>		
<b>Caution:</b> If the amount to be entered on line 10 is zero or more, you do not have a net operating loss.							

**Instructions for Schedule A (Form N-109) — Computation of Net Operating Loss**

**Use this schedule to figure your net operating loss that is available for carryback or carryforward.**

**Note:** If you are a nonresident or part-year resident (Form N-15 filer) you will figure your **Hawaii** net operating loss. Therefore, the amounts entered in the above schedule should be amounts from Column B of your Form N-15.

**Line 1.**—Individuals, enter your adjusted gross income.

**Form N-15 filers:** Enter your **Hawaii** adjusted gross income from Form N-15, line 32, Column B.

**Line 2a.**—Individuals, enter your itemized deductions or standard deduction.

**Form N-15 filers:** Do not enter your itemized deductions from your Form N-15. You must calculate **Hawaii** itemized deductions on the worksheet on page 3.

**Line 2b.**—Enter the amount of your personal exemptions from Form N-11, N-12, or N-15.

**Line 5.**—If your business capital gains plus your nonbusiness capital gains not used in figuring line 8c exceed your business capital losses, enter zero on line 5b. If you have a net capital loss for the year, do not include in line 5c, your net capital loss not allowed this year because of the capital loss limitation. For more information, see federal regulations section 1.172-3.

**Line 8a and b.**—Nonbusiness income and deductions are those not connected with a trade or business.

Itemized deductions, if elected, are usually nonbusiness, except for state income taxes related to a trade or business, casualty loss deductions, and any employee business expenses such as union dues, uniforms, tools and educational expenses.

Salaries and wages you received are trade or business income.

Gain or loss on sale or other disposition of real or depreciable property used in your trade or business is considered business income.

Loss on the sale of accounts receivable, if such accounts arose under the accrual method of accounting in your business, is included as a business deduction.

Casualty losses and theft losses are considered attributable to your trade or business. This is true even if it involves nonbusiness property.

Your proportionate share of a partnership's income or loss is considered business income or loss.

Losses on stock in small business corporations which qualify as ordinary losses are business losses.

Shareholders of an electing small business corporation (S Corporation) see Internal Revenue Code section 1366, for tax treatment of pass-thru items to shareholders.

Loss resulting from the sale or exchange of small business investment company stock which qualifies as an ordinary loss, is considered as a loss attributable to your trade or business.

The deduction allowed for payment made by a self-employed person to a retirement plan is treated as a nonbusiness deduction.

# Calculation of Hawaii Itemized Deductions for Nonresidents and Part-Year Residents

For purposes of calculating your **Hawaii** net operating loss, you must calculate your **Hawaii** itemized deductions. You cannot use the itemized deductions entered on your Form N-15, which are itemized deductions allowed if you were a full year resident. A part-year resident is allowed to claim the same itemized deductions as a full year resident for the period of residency. The following discussion applies to the itemized deductions that may be claimed by a nonresident or a part-year resident during the period of nonresidency.

**A deduction is not allowed at all** if it can be tied to a specific investment, property, or activity carried on outside Hawaii, or which results in income which is not subject to taxation by Hawaii. Examples include income taxes paid to a state other than Hawaii on wages earned as an active duty serviceman stationed in Hawaii and mortgage interest connected with property located outside Hawaii.

**A deduction may be allowed either in full or in part** depending on which of the following three classes of deductions it falls in.

**Class I:** If the deduction is connected with income arising in Hawaii and taxable to a nonresident under Hawaii income tax law, it is allowed in full. Deductions in this class include: (a) All the ordinary and necessary expenses of conducting a business; (b) Income tax paid to Hawaii; (c) Interest paid in connection with taxable income; (d) Casualty losses incurred in a trade or business; and (e) Losses sustained in transactions entered into profit in real property and tangible personal property.

**Class II:** If the deduction is connected with property (other than property associated with income arising in Hawaii falling in Class I) having a tax situs in Hawaii, it is allowable in full. Deductions in this class include: (a) Real property tax on a residence located in Hawaii; (b) Interest on a mortgage connected with property located in Hawaii; and (c) Casualty and theft losses on nonbusiness property located in Hawaii allowed only to the extent that the total losses, after the \$100 deduction, exceed 10% of the adjusted gross income.

**Class III:** If a deduction allowed under Hawaii law is not tied to a specific investment, property, or activity carried on outside Hawaii or which results in income not subject to taxation by Hawaii, and does not fall in either Class I or II above, it is allowed only to the extent of the ratio of adjusted gross income attributable to Hawaii to the total adjusted gross income attributable to worldwide sources. Deductions in this class include: (a) Medical expenses; and (b) Contributions.

## Worksheet - Calculation of Hawaii Itemized Deductions for Nonresidents and Part-Year Residents

**Note:** The references to Worksheets A-1 to A-6 are references to the itemized deduction worksheets in the N-15 instruction booklet.

1. Enter the amount from Form N-15, line 32, Column B (Hawaii adjusted gross income).....
2. Enter the amount from Form N-15, line 32, Column A (adjusted gross income from all sources).....
3. Line 1 divided by line 2 .....

### Medical and dental expenses—

4. Medical or dental expenses from Worksheet A-1, line 1 ..
5. Line 3 times line 4.....
6. Line 1 times 7.5% (0.075) .....
7. Line 5 minus line 6 (but not less than zero). .....

### State and local taxes—

8. State and local taxes from Worksheet A-2, line 9 .....
9. Taxes on out-of-state income earned while nonresident (such as tax withheld on an out-of-state job); and real property taxes paid on property located out-of-state while nonresident .....
10. Taxes on Hawaii income OR on income earned while resident in Hawaii; and real property taxes paid on property located in Hawaii OR paid on property located out-of-state while resident in Hawaii .....
11. Add lines 9 and 10 .....
12. Line 8 minus line 11 .....
13. Line 3 times line 12 .....
14. Add lines 10 and 13 .....

### Interest you paid—

15. Interest expense from Worksheet A-3, line 14 .....
16. Home mortgage interest, points, and investment interest paid on property located out-of-state while nonresident .....
17. Home mortgage interest, points, and investment interest paid on property located in Hawaii OR paid on property located out-of-state while resident in Hawaii .....
18. Add lines 16 and 17 .....
19. Line 15 minus line 18 .....
20. Line 3 times line 19 .....
21. Add lines 17 and 20 .....

### Gifts to charity—

22. Gifts to charity from Worksheet A-4, line 18 .....
23. Line 3 times line 22 .....

### Casualties and thefts—

24. Casualty and theft losses from Worksheet A-5, line 19....
25. Casualty and theft losses on property located out-of-state while nonresident .....
26. Casualty and theft losses on property located in Hawaii OR on property located out-of-state while resident in Hawaii .....
27. Add lines 25 and 26 .....
28. Line 24 minus line 27 .....
29. Line 3 times line 28 .....
30. Add lines 26 and 29 .....

31. Line 1 times 10% (0.10) .....
32. Line 30 minus line 31 (but not less than zero) .....

### Miscellaneous itemized deductions—

33. Miscellaneous deductions from Worksheet A-6, line 23...
34. Miscellaneous deductions directly associated with activities or properties producing income which is not taxable to Hawaii .....
35. Miscellaneous deductions directly associated with activities or properties producing income which is taxable to Hawaii .....
36. Add lines 34 and 35 .....
37. Line 33 minus line 36 .....
38. Line 3 times line 37 .....
39. Add lines 35 and 38 .....
40. Line 1 times 2% (0.02) .....
41. Line 39 minus line 40 (but not less than zero) .....
42. Other deductions not subject to 2% AGI limit from Worksheet A-6, lines 27 and 28 .....
43. Deductions directly associated with activities or properties producing income which is not taxable to Hawaii .....
44. Deductions directly associated with activities or properties producing income which is taxable to Hawaii ..
45. Add lines 43 and 44 .....
46. Line 42 minus line 45 .....
47. Line 3 times line 46 .....
48. Add lines 41, 44, and 47 .....

### Total Hawaii Itemized Deductions—

49. Add the amounts on lines 7, 14, 21, 23, 32, and 48. If line 1 is more than \$100,000 (\$50,000 for married filing separately), continue on to line 50. If not, STOP HERE; enter the amount from line 49 on line 2a of Schedule A (Form N-109) .....
50. Add the amounts on lines 7 and 32, any gambling losses included on line 48, and the amount of investment interest .....
51. Line 49 minus line 50 (If the result is zero or less, STOP HERE; enter the amount from line 49 on line 2a of Schedule A (Form N-109)) .....
52. Multiply line 51 by 80% (.80) .....
53. Enter the amount from line 1 .....
54. Enter \$100,000 (\$50,000 if married filing separately) .....
55. Line 53 minus line 54. (If the result is zero or less, STOP HERE; enter the amount from line 49 on line 2a of Schedule A (Form N-109)) .....
56. Multiply line 55 by 3% (.03) .....
57. Compare the amounts on lines 52 and 56. Enter the SMALLER of the two amounts here .....
58. Line 49 minus line 57. Enter the result here and on line 2a of Schedule A (Form N-109) .....

STATE OF HAWAII — DEPARTMENT OF TAXATION  
**GENERAL INSTRUCTIONS FOR APPLICATIONS FOR TENTATIVE  
REFUND FROM CARRYBACK OF NET OPERATING LOSS**

**FOR USE BY INDIVIDUALS, ESTATES, OR TRUSTS**

*(Section references are to the Internal Revenue Code unless otherwise specified)*

**Note:** The federal provision for the net operating loss carryback and carryforward rules in the Taxpayer Relief Act of 1997 has not been adopted for Hawaii income tax purposes at the present time.

**A. WHO MAY FILE AN APPLICATION.**—An application for a tentative carryback adjustment may be filed on this form by any individual, estate, trust, or fiduciary who desires a quick refund of taxes which are affected by the carryback of a net operating loss.

With respect to a net operating loss incurred for a taxable year ending after 12/31/77, the taxpayer has an option on whether or not to carry a loss back first before carrying it forward. This form should only be used by those taxpayers choosing to carry their losses back.

If you filed a joint return for some, but not all of the tax years involved in the carryback, see section 1.172-7 of the federal regulations before applying the carryback.

You may elect to carry forward a net operating loss instead of first carrying it back by attaching a statement to this effect on a timely filed return (including any extensions) for the year of the loss. Once you make such an election, it is irrevocable for that year. The carryforward is limited to 15 years, whether or not a carryback is used first. This election may be made for taxable years ending after 12/31/77.

However, no part of any net operating loss incurred outside of the State prior to beginning business in the State may be included in such election.

**B. TIME AND PLACE FOR FILING.**—This form must be filed with the district office with which the individual, estate, or trust is required to file its income tax return, and must be filed on or after the date of filing of the return for the taxable year of the net operating loss and within 12 months from the end of such taxable year. Do not attach this form to your income tax return.

IF YOU FAIL TO MEET THE FOREGOING LIMITATION, YOU MAY FILE AN AMENDED RETURN WITHIN THREE YEARS OF THE DUE DATE PRESCRIBED FOR FILING THE RETURN, INCLUDING EXTENSIONS, FOR THE NET OPERATING LOSS YEAR OR THE PERIOD AGREED TO UNDER A WRITTEN EXTENSION OF TIME, WHICHEVER IS LATER.

**C. RECOMPUTATION OF TAX LIABILITY.**—In determining the decrease attributable to the net operating loss carryback in the tax previously determined, such tax is to be recomputed. The use of Form N-11, N-12, N-15, or N-40 and instructions, for the applicable taxable year, will be helpful in making this recomputation.

The amount of the adjustment is limited to the decrease in such tax as previously determined which results from the net operating loss carryback and the effect of such carryback upon any item taken into account in computing the tax previously determined. Such decrease must be computed on the basis of the items reflected in the computation of the tax as previously determined. Accordingly, items must be taken into account only to the extent that they were reported in the return, or were reflected in amounts assessed (or collected without assessment) as deficiencies, or in amounts which were abated, credited, refunded, or otherwise repaid prior to the date of filing this application.

Deductions (except the charitable contributions deduction) which are limited, for example, by taxable income or adjusted gross income, are to be recomputed on the basis of the taxable income or adjusted gross income as affected by the carryback.

In general, the tax previously determined will be the tax shown on the return as filed, increased by any amounts assessed (or collected without assessment) as deficiencies prior to the date of filing this application and decreased by any amounts abated, credited, refunded, or otherwise repaid prior to such date.

If any amount of the tax with respect to which a decrease is determined in connection with this application is unpaid (including any installment not yet due) at the date of filing the application, enter the unpaid amount of such tax in the appropriate column.

**Note:** As provided by statute, adjustment to refundable tax credits, except the credit for child and dependent care expenses, must be claimed on or before the end of the year following the year for which the credits are claimed.

**D. ALLOWANCE OF ADJUSTMENT.**—The Director of Taxation will act on this application within a period of 90 days from whichever of the following two dates is the later:

1. The date on which this application is filed; or

2. The last day of the month in which falls the last date prescribed by law (including any extension of time granted) for filing the return for the taxable year of the net operating loss from which the carryback results.

**E. DISALLOWANCE OF APPLICATION.**—Any application which contains material omissions or computation errors which the Director of Taxation deems cannot be corrected within the 90-day period may be disallowed. This application for a tentative carryback adjustment does not constitute a claim for credit or refund. If this application is disallowed in whole or in part, no suit based thereon may be maintained in any court for the recovery of the tax. The taxpayer may, however, file a regular claim for credit or refund on an amended return at any time before the expiration of the applicable period of limitation, as further explained in instruction G.

**F. ASSESSMENT OF ERRONEOUS ALLOWANCES.**—Any amount applied, credited, or refunded on the basis of this application which is later determined by the Director of Taxation to be excessive may be assessed as a deficiency as if it were due to a mathematical error appearing on the return.

**G. FORM N-188X (or other Amended Return)**—If you are an individual, you may obtain a refund by filing Form N-188X. An estate, trust, or fiduciary may file an amended return. Generally, Form N-188X (or amended return) must be filed within 3 years after the due date of the return for the tax year of the net operating loss.

If you use Form N-188X or an amended return, attach a computation of your net operating loss. You may use Schedule A (Form N-109). A separate Form N-188X or amended return must be completed for each year you request an adjustment.

**H. YEARS TO WHICH YOU MAY CARRY A NET OPERATING LOSS.**—Generally, you must first carry a net operating loss back to the third tax year before the loss.

Any amount of the loss not used to offset taxable income (adjusted, as explained in instruction K) for the third preceding year is carried to the second preceding year. Any amount of the loss not used to offset such income for the third and second preceding years is carried to the first preceding year. Where the loss is not entirely used to offset taxable income (adjusted) in the 3 preceding years, the balance may be carried forward to the 15 succeeding years (after net operating loss year) in the order of their occurrence. The balance of the loss (if any) which is not applied in the 3 carryback and 15 carryover years, cannot be carried to any later tax years.

For election with respect to the part of a net operating loss from a foreign expropriation loss, product liability loss, and other exceptions to the general rule, see section 172(b) and the federal regulations.

**I. NET OPERATING LOSS DEDUCTION.**—The sum of your net operating loss carrybacks and carryovers is your net operating loss deduction for the tax year to which carried. Before you can figure your net operating loss deduction for the year, you must first determine what part of any net operating losses for any earlier or later tax years represents carryovers or carrybacks to the tax year under consideration. When you have more than one net operating loss to be carried to the same tax year, apply the loss from the earliest year first.

**J. COMPUTATION WHEN THE NET OPERATING LOSS IS FULLY ABSORBED IN THE EARLIEST PRECEDING TAX YEAR.**—In figuring your tax liability for the year to which the net operating loss is carried and fully absorbed, the deduction for charitable contributions is determined without regard to any net operating loss carryback. Any other deductions claimed, based on or limited to a percentage of your adjusted gross income (such as medical expenses) must be figured on the basis of your adjusted gross income, determined after application of the net operating loss carryback. Also, any credits based on or limited by the tax may be figured on the tax liability as determined after application of the net operating loss carryback.

**K. COMPUTATION WHEN THE NET OPERATING LOSS IS NOT FULLY ABSORBED IN PRECEDING TAX YEAR(S).**—The amount of a net operating loss which you may carry to the next year, after applying it to a prior year or years, is the excess, if any, of the net operating loss carryback over the taxable income of such prior year(s) figured with the following modifications:

(1) Your deduction for capital losses must not be more than the capital gains included in gross income.

(2) You are not permitted any deduction for the excess of a net long-term capital gain over a net short-term capital loss.

(3) Your taxable income for the prior tax year(s) is determined without taking into account the net operating loss carryback from the loss year or any later tax year. Net operating losses, otherwise allowable as carrybacks or carryovers, occurring in tax years before such loss year, are taken into account in figuring the taxable income for the prior tax year.

(4) You may not claim any personal exemptions.

(5) Any deductions claimed, except charitable contributions, which are based on or limited to a percentage of adjusted gross income (such as medical expenses) must be refigured on the basis of the adjusted gross income after application of adjustments (1), (2), and (3) above. The deduction for charitable contributions is determined using the same adjustments except that you do not take into account any net operating losses being carried back.

The taxable income as modified is to be considered not less than zero.

**L. ATTACHMENTS.**—For taxable years beginning after December 31, 1994, attach copies of your original federal Form 1040, and federal Schedules A, B, and D to Form N-109. If the copies are not attached the processing of your return and refund may be delayed.

### Line-By-Line Instructions For Form N-109

Enter in columns (a), (c), and (e) your tax for the applicable carryback year as shown on your original or amended return. If the return was exam-

ined, enter the amounts that were determined as a result of the examination.

**Line 9. Deductions.** — Individuals — Enter the amount of your itemized deductions or the standard deduction amount if you did not itemize your deductions.

**Line 11. Exemptions.** — Individuals — Enter \$1,040 times the number of exemptions claimed.

Those qualifying for the disability exemption use the appropriate amounts instead of the above.

**Line 13. Income Tax.** — Refigure your tax after the carryback to determine the tax decrease. Include in the tax before carryback, amounts shown on your original or amended return, and later adjusted, based on an examination of your return.

Attach a detailed computation of the new tax liability shown on line 13, columns (b), (d), and (f). The tax form and instructions for the applicable year will be helpful in making this computation. Include in the amount on line 13 any tax from Schedule D, Form N-103, Form N-152, Form N-312, Form N-405, Form N-586, Form N-615, Form N-814, or the tax on non-qualified distributions from individual housing accounts.

**Line 14. Non-refundable credits.** —The non-refundable credits are the credit of taxes paid to another state or foreign country; the credit for energy conservation devices; the low-income housing credit; the enterprise zone credit; and the credit for employment of vocational rehabilitation referrals.

**Line 16. Refundable credits.** —The refundable tax credits include the excise tax credit; the low-income household renter's credit; the food tax credit; the credit for child and dependent care expenses; the capital goods excise tax credit; the credit for the purchase of child passenger restraint systems; the fuel tax credit for commercial fishers; medical services excise tax credit; credit for taxes withheld on the sale of Hawaii real property interests by a partnership, estate, trust, or S corporation; the shareholder's credit for taxes on capital gains paid to the State by a regulated investment company; and the general income tax credit.